

# New Mexico Foundation for Open Government

June 15, 2010

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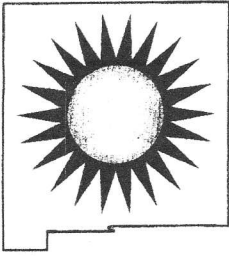
Dear Mr. Bustamante,

It has come to our attention that the Socorro Electric Cooperative is embroiled in a controversy over recent by-law amendments that impose transparency requirements on the corporation. We believe that our perspective may be useful to the Board of Trustees and Cooperative members.

It is not for us to say what the precise wording of the Cooperative's by-laws should be. However, your Cooperative members have made their wishes clear – they seek a guarantee of free access to information about how their corporation is being managed. The New Mexico Foundation for Open Government supports that effort wholeheartedly. Transparency promotes good governance, in both the public and private sectors. Secrecy promotes the concentration of power and control in the hands of a few, in direct contravention of democratic cooperative principles.

Furthermore, regardless of what the Cooperative's by-laws say now or in the future, an individual member's right to inspect the books of his rural electric cooperative is already guaranteed by state corporate law. The New Mexico Supreme Court upheld that right in Schein v. Northern Rio Arriba Electric Cooperative, 1997-NMSC-011, 122 N.M. 800, 932 P.2d 490. Schein, a newspaper reporter and member of the defendant cooperative, was successful in obtaining access to legal bills paid by the company. The Court articulated its argument in strong terms:

Schein's motivation to investigate NORA's use of resources and the nature and quality of the legal advice given to it was reasonably



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related to her role as a member. Like any business choice, the selection of legal services and a determination of the value of services received are relevant inquiries to a party concerned about his investment in the entity; as a owner of a proprietary interest in NORA, Schein has a legal right to be informed as to the management of the cooperative property by the Board in charge of that property. Such information would indicate whether the legal and financial choices being made by NORA were sound; also, such decisions would directly impact the capital accounts of NORA. Shareholders generally are entitled to monitor the activities of their agents. Meyer v. Board of Managers of Harbor House Condominium Ass'n, 221 Ill.App.3d 742, 164 Ill. Dec. 460, 464, 583 N.E.2d 14, 18 (1991) (allegation that entity was incurring excessive attorney fees established good faith fear that organization was mismanaging its financial matters, establishing a proper purpose to inspect corporate records); cf. Belth v. American Risk & Ins. Ass'n, 141 Wis.2d 65, 413 N.W.2d 654 (App.1987). We find that these grounds are premised upon concerns reasonably related to Schein's role as a member of NORA.

Given this strong presumption of shareholder rights, we urge the Board of Trustees to work with its member-owners to guarantee and provide access to corporate information. This is the practice of private companies the world over, and we submit that it is the best way to ensure honesty, quality service and value for your shareholders.

Please do not hesitate to contact me if I can be of any assistance. NM-FOG's mission is to educate the public about the principle and practice of transparency in governance, and we would be happy to discuss this matter with you.

Sincerely,

Sarah Welsh  
Executive Director